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**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against: Case No. 1D 2002 62945

PHILIP THOMAS FREEMAN
31421 Avenida Del Yermo
Cathedral City, CA 92234

A C C U S A T I O N

Physical Therapist=s License Number PT 20054

Respondent.

Complainant alleges:

PARTIES


1. Steven K. Hartzell (>Complainant=) brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.


2. On or about September 9, 1994, the Physical Therapy Board of California issued Physical Therapist=s License number PT 20054 to Philip Thomas Freeman (>Respondent=). The Physical Therapist=s License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2003, unless renewed.

JURISDICTION

1 3. This Accusation is brought before the Physical Therapy Board of
2 California (>Board=), Department of Consumer Affairs, under the authority of the statutes and
3 regulations mentioned below.¹

4 4. Section 2609 of the Code states:
5 AThe board shall issue, suspend, and revoke licenses and approvals to practice
6 physical therapy as provided in this chapter.@

7 5. Section 2660 of the Code states:
8 AThe board may, after the conduct of appropriate proceedings under the
9  Administrative Procedure Act, suspend for not more than 12 months, or revoke, or
10 impose probationary conditions upon, or issue subject to terms and conditions any
11 license, certificate, or approval issued under this chapter for any of the following causes:

12  A...
13 A(d) Conviction of a crime which substantially relates to the
14 qualifications, functions, or duties of a physical therapist. The record of conviction or a
15 certified copy thereof shall be conclusive evidence of the conviction.@

16 A...
17 A(i) Conviction of a violation of any of the provisions of this chapter or of
18 the State Medical Practice Act, or violating, or attempting to violate,
19 directly or indirectly, or assisting in or abetting the violating of, or
20 conspiring to violate any provision or term of this chapter or of the State
21 Medical Practice Act.@

22 A...
23 A(l) The commission of any fraudulent, dishonest, or corrupt act which is

24
25 1. All statutory references are to the Business and Professions Code (Code) unless
26 otherwise indicated.

1 substantially related to the qualifications, functions, or duties of a physical
2 therapist.@

3 A....@

4 6. Section 2661 of the Code states:

5 AA plea or verdict of guilty or a conviction following a plea of nolo contendere

6 made to a charge of a felony or of
7 any offense which substantially relates to
8 the qualifications, functions, or duties of a
9 physical therapist is deemed to be a
10 conviction within the meaning of this article.

11 The board may order the license suspended
12 or revoked, or may decline to issue a
13 license, when the time for appeal has
14 elapsed, or the judgement of conviction has
15 been affirmed on appeal or when an order
16 granting probation is made suspending the
17 imposition of sentence, irrespective of a
18 subsequent order under Section 1203.4 of
19 the Penal Code allowing that person to
20 withdraw his or her plea of guilty and to
21 enter a plea of not guilty, or setting aside the
22 verdict of guilty, or dismissing the
23 accusation, information, or indictment.@

24 7. Section 2237 of the Code states:

25 A(a) The conviction of a charge of violating any federal statutes or regulations or
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1 any statute or regulation of this state, regulating dangerous drugs or controlled
2 substances, constitutes unprofessional conduct. The record of the conviction is
3 conclusive evidence of such unprofessional conduct. A plea or verdict of guilty or a
4 conviction following a plea of nolo contendere is deemed to be a conviction within the
5 meaning of this section.@"

6 8. Section 2238 of the Code states:

7 AA violation of any federal statute or federal regulation or any of the statutes or
8 regulations of this state regulating dangerous drugs or controlled substances constitutes
9 unprofessional conduct.@"

10 9. Section 2239 of the Code states:

11 A(a) The use or prescribing for or administering to himself or herself, of any
12 controlled substance; or the use of any of the dangerous drugs specified in Section 4022,
13 or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or
14 injurious to the licensee, or to any other person or to the public, or to the extent that such
15 use impairs the ability of the licensee to practice medicine safely or more than one
16 misdemeanor or any felony involving the use, consumption, or self-administration of any
17 of the substances referred to in this section, or any combination thereof, constitutes
18 unprofessional conduct. The record of the conviction is conclusive evidence of such
19 unprofessional conduct.

20 A(b) A plea or verdict of guilty or a conviction following a plea of nolo
21 contendere is deemed to be a conviction within the meaning of this section. The Division
22 of Medical Quality may order discipline of the licensee in accordance with Section 2227
23 or the Division of Licensing may order the denial of the license when the time for appeal
24 has elapsed or the judgment of conviction has been affirmed on appeal or when an order
25 granting probation is made suspending imposition of sentence, irrespective of a
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1 subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such
2 person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting
3 aside the verdict of guilty, or dismissing the accusation, complaint, information, or
4 indictment.@

5 1. Section 490 of the Code states:

6 AA board may suspend or revoke a license on the ground that the licensee has
7 been convicted of a crime, if the crime is substantially related to the
8 qualifications, functions, or duties of the business or profession for which the license was
9 issued. A conviction within the meaning of this section means a plea or verdict of guilty
10 or a conviction following a plea of nolo contendere. Any action which a board is
11 permitted to take following the establishment of a conviction may be taken when the time
12 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or
13 when an order granting probation is made suspending the imposition of sentence,
14 irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal
15 Code.@

16 2. Section 492 of the Code states:


17 ANotwithstanding any other provision of law, successful completion of any
18 diversion program under the Penal Code, or successful completion of an alcohol
19 and drug problem assessment program under Article 5 (commencing with section
20 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any
21 agency established under Division 2 ([Healing Arts] commencing with Section 500) of
22 this code, or any initiative act referred to in that division, from taking disciplinary action
23 against a licensee or from denying a license for professional misconduct, notwithstanding
24 that evidence of that misconduct may be recorded in a record pertaining to an arrest.@

25 3. Section 493 of the Code states:

1 ANotwithstanding any other provision of law, in a proceeding conducted by a
2 board within the department pursuant to law to deny an application for a license or to
3 suspend or revoke a license or otherwise take disciplinary action against a person who
4 holds a license, upon the ground that the applicant or the licensee has been convicted of a
5 crime substantially related to the qualifications, functions, and duties of the licensee in
6 question, the record of conviction of the crime shall be conclusive evidence of the fact
7 that the conviction occurred, but only of that fact, and the board may inquire into the
8 circumstances surrounding the commission of the crime in order to fix the degree of
9 discipline or to determine if the conviction is substantially related to the qualifications,
10 functions, and duties of the licensee in question.

11 AAs used in this section, >license= includes >certificate,= >permit,=
12 >authority,= and >registration=.@

13 4. California Code of Regulations, title 16, section 1399.20, states:

14 AFor the purposes of denial, suspension or revocation of a license or approval,
15 pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or
16 act shall be considered to be substantially related to the qualifications, functions or duties
17 of a person holding a license or approval under the Physical Therapy Practice Act if to a
18  substantial degree it evidences present or potential unfitness of a person to perform the
19 functions authorized by the license or approval in a manner consistent with the public
20 health, safety or welfare. Such crimes or acts shall include but not be limited to the
21 following:

22 A(a) Violating or attempting to violate, directly or indirectly, or assisting in or
23 abetting the violation of, or conspiring to violate any provision or term of the Physical
24 Therapy Practice Act.

25 A...

1 A(c) Violating or attempting to violate any provision or term of the Medical
2 Practice Act.

3 A....@

4 14. Section 2661.5 of the Code states:

5 A(a) In any order issued in resolution of a disciplinary proceeding before the
6 board, the board may request the administrative law judge to direct any licensee found
7 guilty of unprofessional conduct to pay to the board a sum not to exceed the actual and
8 reasonable costs of the investigation and prosecution of the case.@

9 FIRST CAUSE FOR DISCIPLINE

10 (Conviction of a Crime)

11 15. Respondent is subject to disciplinary action under sections 490, 492, 493,
12 2660, subdivision (d) and 2661, in that he was charged with a felony crime substantially related
13 to the qualifications, functions, or duties of a physical therapist. Respondent pled guilty, but as a
14 result of his successful completion of diversion under Penal Code section 1000, criminal
15 proceedings as to him were suspended and no judgment or other order deemed a judgment of
16 conviction has been entered. The circumstances are as follows:

17 a. On or about January 19, 2001, a felony complaint was filed against Respondent
18 in a criminal proceeding entitled *People of the State of California v. Philip*
19 *Thomas Freeman*, in the Superior Court of California, County of Riverside, Case Number
20 INF036519. Respondent pled guilty to the crime of possession of a controlled
21 substance, methamphetamine, a felony, in violation of Health and Safety Code section
22 11277, subdivision (a).

23 2. On or about October 21, 1999 entry of judgment was deferred and diversion was
24 granted pursuant to Penal Code section 1000. The court ordered Respondent to complete
25 a drug diversion program and pay fines in the amount of \$225.00. Respondent
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1 successfully completed the program and furnished proof of completion to the court on
2 July 1, 2002. Thus, criminal proceedings as to him were suspended and no judgment of
3 conviction or other order deemed a judgment of conviction by Penal Code section 1237
4 have been entered.

5 3. The facts and circumstances of the offense are as follows:

6 On December 27, 2000, in Rancho Mirage, Respondent was stopped by a
7 sheriff=s deputy for having expired vehicle registration tabs. While Respondent was
8 retrieving his insurance and registration documentation, the sheriff noticed a syringe and
9 a glass meth-pipe inside the glove compartment of the Respondent=s vehicle.
10 Respondent told the deputy sheriff that the syringe and the pipe belonged to him. In
11 response to the question whether there were any illegal drugs in his car, Respondent said
12 he had Aa rock in the prescription bottle.@ Respondent=s car was searched with his
13 consent. A clear plastic bag with 1.2 grams of methamphetamine was found. Respondent
14 told the sheriff=s deputy that he had purchased the methamphetamine from a Hispanic
15 male at the Indian casino. Respondent was then placed under arrest and taken to jail in
16 Indio. During the transport, Respondent kept saying he wanted to quit doing drugs. In a
17 two-count felony complaint, Respondent was charged with the crimes of possessing a
18 controlled substance, a violation of Health and Safety Code section 11379, subdivision
19 (a), and possession of a device, contrivance, instrument or paraphernalia for unlawfully
20 injecting or smoking a controlled substance in violation of Health and Safety Code
21 section 11364.

22 SECOND CAUSE FOR DISCIPLINE

23 (Violation of Drug-Related Statutes Proscribed by the Medical Practice Act)

24 16. Respondent is subject to disciplinary action under sections 490, 492, 493, 2237,
25 2238, 2260, and 2661, in that he committed a felonious crime in violation of Health and Safety
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1 Code section 11379, regulating controlled substances. The circumstances are as follows:

2 1. The facts and allegations set forth in paragraph 15 above are incorporated here.

3 THIRD CAUSE FOR DISCIPLINE

4 (Self Abuse Of Drugs)

5 17. Respondent is subject to disciplinary action under sections 490, 492, 493, 2239,
6 2660, subdivision (i) and 2661, in conjunction with section 1399.20 of Title 16 of the California
7 Code of Regulations, in that he was using and administering to himself a controlled substance,
8 specifically methamphetamine. The circumstances are as follows:

9 2. The facts and allegations set forth in paragraph 15 above are incorporated here.

10 FOURTH CAUSE FOR DISCIPLINE

11 (Commission of A Corrupt Act)

12 18. Respondent is subject to disciplinary action under sections 490, 492, 493, 2660,
13 subdivision (l) and 2661, in conjunction with section 1399.20 of Title 16 of the California Code
14 of Regulations, in that he committed a felonious crime substantially related to the qualifications,
15 functions, or duties of a physical therapist. The circumstances are as follows:

16 3. The facts and allegations set forth in paragraph 15 above are incorporated here.

17 PRAYER

18 WHEREFORE, Complainant requests that a hearing be held on the matters herein
19 alleged, and that following the hearing, the Physical Therapy Board of California issue a
20 decision:

21 . Revoking or suspending Physical Therapist License Number PT 20054,
22 issued to Philip Thomas Freeman;

23 a. Ordering Philip Thomas Freeman to pay the Physical Therapy Board of
24 California the reasonable costs of the investigation and enforcement of this case, pursuant to
25 Business and Professions Code section 2661.5;

b. Taking such other and further action as deemed necessary and proper.
DATED: 11/06/02

Original Signed By
STEVEN K. HARTZELL
Executive Officer
Physical Therapy Board of California
Department of Consumer Affairs
State of California
Complainant